



EMPLOYMENT TRIBUNALS

Claimant: Ms Kevser Erturk

Respondent: Turkish Airlines

Heard at: Reading **On: 5 and 6 June 2023**

Before: Employment Judge Gumbiti-Zimuto

Appearances

For the Claimant: In person

For the Respondent: Ms Thomas, counsel

RESERVED JUDGMENT

The claimant's complaints of unfair dismissal, and wrongful dismissal are not well founded and are dismissed.

REASONS

1. The claimant was employed by the respondent, an airline, latterly as a sales agent, from 10 August 2015 until her dismissal on 18 November 2019. By a claim form presented on 14 February 2020 following a period of early conciliation from 12 February 2020 to 12 February 2020, the claimant brought complaints of unfair dismissal, redundancy, breach of contract (failure to pay notice pay), failure to pay holiday pay and other arrears and discrimination on grounds of pregnancy or maternity, religion or belief, disability and sex.
2. The claims of redundancy, sex discrimination, pregnancy and maternity discrimination, holiday pay and for other arrears were all withdrawn. The claimant's remaining Equality Act 2010 claims were struck out because of the claimant's failure to comply with an unless order. The claimant's remaining claims are unfair dismissal and breach of contract.
3. The claimant alleges that her dismissal was unfair. In summary, the respondent's defence is that the claimant was dismissed for gross misconduct following a fair process in which both her grievance and the disciplinary allegations were investigated and considered and that the sanction of dismissal was a fair one in the circumstances.

4. The claimant gave evidence in support of her own case. Her witness statements was provided in a piecemeal fashion and is to be found in statement p17, further statement p45 of the respondent's bundle, a statement date 23 August 2021, and a statement dated 31 January 2023 (sent to the Tribunal as an attachment to the claimant's email of 2 June 2023). The claimant also relied on a series of other statements which read as character references for the claimant save for the statement of Mr Micheal Ologun who is a union representative who assisted the claimant through some of her dealings with the respondent. The respondent relied on the evidence Mr Abdullah Hazar (Regional Sales Manager), Mr Ali Tanberk (UK Regional Accounting Manager) and Mr Celal Baykal (General Manager), they all produced statements which were taken as evidence in chief. The parties produced two set of bundles which in the main appeared to contain the same documents set out differently. The page references in this decision relate to the respondent's bundle. From these sources I made the following findings of fact.
5. The claimant's employment with the respondent commenced on 10 August 2015. At the time of her dismissal the claimant was employed by the respondent as a Sales and Reservations Agent based at Heathrow Airport.
6. The claimant set out a history of conflict with her colleague SD, which had led to the claimant reporting SD to her manager, and beyond, for bullying and harassment. The claimant says that he complaints fell on stony ground, they were largely ignored by her managers. The respondent's witnesses, Mr Tanberk and Mr Baykal, took issue with the claimant's representation of the respondent's reaction to complaints made by the claimant. Mr Baykal said that it was a failure of the claimant to produce evidence substantiating her complaints that prevented action from the respondent.
7. The claimant explained how on 17 March 2018 SD initiated a petition containing allegations against the claimant. The respondent accepts that SD did initiate a petition against the claimant however as SD failed to gain any support for the petition against the claimant it was abandoned and never submitted to the respondent's management.
8. Around the same time, 17 March 2018, the claimant indicated that she would make a complaint to Istanbul Ethical Board of the respondent. The claimant was told by a senior manager that he would consider the matter with the aim of resolving it locally. The claimant says that nothing happened, however, meanwhile SD continued her harassment of the claimant and even after 8 months, on 28 December 2018 when she chased up her complaint against SD. The claimant's position is that there was no action or response to the complaints that she made.
9. On 2 May 2019 the claimant made a complaint to the "Presidency of Republic of Turkey Directorate of Communications". The response to which was that they could not deal with the matter.

10. On 15 May 2019 the claimant made a complaint about her line manager and another to Mr Baykal, the General manager. The claimant made a further complaint to the respondent's Ethical Board in Turkey, following this up with a reminder on 12 June 2019. On 31 May 2019 the claimant sent a further complaint to Mr Baykal. The claimant received no response.
11. On 11 June 2019 SD, while at work using outlook email account wrote a letter of complaint about the claimant. After leaving the particular terminal on which she was working SD failed to log out. Later in the day, after SD left work, the claimant discovered the letter when she went to work on the terminal that SD had been using. The claimant was upset by the content of the letter. The claimant took a copy of the letter and on 12 June 2019 she lodged a complaint with Mr Baykal and then subsequently raised a grievance on 25 June 2019.
12. On 18 June 2019 SD made a grievance against the claimant. The grievance included the allegation that the claimant had gone through SD's email account taken photographs of things written in confidence and then sent them to the SD's husband to draw attention to an allegation of SD's personal relationship with someone else. On 26 June 2019 GCM, another of the claimant's colleagues, sent an email to managers explaining that the claimant had recently asked GCM to support her.
13. On 4 July the claimant discussed the possibility of a transfer to Gatwick Airport while the issues that had arisen in the grievance were investigated. The claimant declined the option of transferring to Gatwick Airport. The claimant was subsequently suspended from work, on 5 July 2019, pending investigation into the allegations of misconduct.
14. On 8 July 2019 GCM complained that the claimant had spoken to him in a threatening manner after she found out that he had reported her behaviour.
15. Mr Hazar was appointed to carry out an investigation into the claimant's grievance and the complaints made against the claimant.
16. In the course of his investigation Mr Hazar took 23 statements, reviewed CCTV footage, social media, WhatsApp messages and reviewed other evidence. Mr Hazar had meetings with the claimant on 12 July, 18 July and 9 August 2019. The claimant signed the notes of the meetings with Mr Hazar after checking them for accuracy and making the corrections she considered necessary.
17. Mr Hazar stated that the claimant mentioned a lot of different people in her grievance and that he considered all the evidence provided by the claimant but concluded that a lot of the claimant's grievance points did not have any corresponding evidence to back up the claimant's version of the allegations and therefore the grievance points were not upheld.
18. Mr Hazar prepared an investigation report and wrote to the claimant informing her that her grievance was not upheld. Mr Hazar also

recommended that the management conduct a disciplinary hearing against the claimant. The claimant was told that she had the right to appeal against the decision on the grievance.

19. On 9 November 2019 the claimant wrote stating that she wished to appeal the grievance. Mr Cantekin wrote to the claimant asking the claimant to clarify her appeal points on 11 November 2019 and again asked the claimant to specify her appeal points on 20 November. The claimant did not provide any further details and the grievance appeal was not advanced further.
20. Mr Tanberk was appointed as the disciplinary hearing manager. Mr Tanberk wrote to the claimant on 6 November 2019 asking the claimant to attend a meeting to discuss a number of allegations which were set out in the letter. The claimant was provided with relevant documents and told that she was entitled to attend with a representative and that if she was found to be guilty of gross misconduct she could be dismissed without notice or pay in lieu of notice.
21. A disciplinary hearing took place on 13 November 2019. The notes of the hearing which were not contested by the claimant appear at p554-555 and show the claimant denying the allegations contained in the disciplinary hearing letter and the report. The claimant gave little by way of explanation or further evidence at this meeting. In her evidence to the Tribunal the claimant explained that she had dealt with all the allegations fully during her meeting with Mr Hazar. Mr Tanberk makes the following comment about the claimant's approach to the disciplinary hearing.
 11. All of the other allegations, Ms Erturk denied or stated there was no evidence for the allegation. The allegation of contacting Mr Yilmaz and shouted at him regarding work allocated to another member of staff was not discussed at the meeting.
 12. I gave Ms Erturk a number of opportunities if she would like to add any additional comments about the allegations. Ms Erturk refused to give any extra explanations or comments with regards to the allegations.
 13. After the meeting I gave myself some time and opportunity to consider the evidence and comments made by Ms Erturk at the disciplinary meeting. I found it particularly difficult to understand why Ms Erturk refused to elaborate on the allegations and reviewing the evidence as a whole this affected her credibility.
 14. Following the disciplinary hearing, I carried out some further investigation and met with investigation manager Abdulllah Hazar to discuss his investigation, the statements of the interviewed staff and investigation findings.

22. Mr Tanberk set out his conclusions in a letter dated 15 November 2019 and informed the claimant of the allegations he had upheld. Mr Tanberk decided that the claimant was guilty of gross misconduct and after considering alternatives to dismissal came to the conclusion that the appropriate sanction was summary dismissal. The claimant's last day of service was 18 November 2018.
23. The claimant was informed that she had the right to appeal against the decision to dismiss her.
24. The claimant set out her appeal in a letter /email of 18 November 2019. The claimant's appeal was conducted by Mr Baykal. The claimant attended her appeal hearing on 25 November 2019. In the hearing each of the claimant's appeal points was discussed, the claimant also complained that she had been discriminated against because of disability. Mr Baykal decided to dismiss the claimant's appeal and upheld the dismissal of the claimant for gross misconduct.
25. In considering wrongful dismissal I am required to decide whether the misconduct actually occurred. In a claim for wrongful dismissal the legal question is whether the employer dismissed the claimant in breach of contract. Dismissal without notice will be such a breach unless the employer is entitled to dismiss summarily.
26. An employer may dismiss summarily if the employee is in breach of contract and that breach is repudiatory - that is where the employee "abandons and altogether refuses to perform" the contract. For example where the employee does an act of gross misconduct.
27. Section 98 of the Employment Rights Act 1996 ("ERA") provides that in determining whether the dismissal of an employee was fair or unfair, it shall be for the employer to show the reason (or, if there was more than one, the principal reason) for the dismissal, and that it is a reason falling within subsection (2) of section 98. The conduct of an employee is a reason falling within the subsection.
28. Where an employer has shown a potentially fair reason the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and shall be determined in accordance with equity and the substantial merits of the case.
29. A respondent employer must show that he believed the claimant was guilty of misconduct, had reasonable grounds upon which to sustain the belief, at the stage which it formed that belief on those grounds, it carried out as much investigation into the matter as was reasonable in the circumstances of the case.

30. It is not necessary that the tribunal itself would have shared the same view of those circumstances.
31. After considering the investigatory and disciplinary process, the tribunal has to consider the reasonableness of the employer's decision to dismiss and (not substituting its own decision as to what was the right course to adopt for that of the employer) must decide whether the claimant's dismissal "fell within a band of reasonable responses which a reasonable employer might have adopted. If the dismissal falls within the band the dismissal is fair: if the dismissal falls outside the band it is unfair". The burden is neutral at this stage: the tribunal has to make its decision based upon the evidence of the claimant and respondent with neither having the burden of proving reasonableness.

Conclusions

32. The claimant in this case was a litigant in person and was disadvantaged by that fact and also by virtue of her passion which meant that at times, while being questioned, she failed to answer questions and made tangential mini speeches and when questioning the respondent's witnesses failed to ask questions but again instead made mini speeches. I am however satisfied that from the various sources of evidence that she prepared before the hearing and also from the evidence that she gave during the case that I was able to understand not only the thrust of the claimant's case but the detail of it.
33. The claimant did not make a standard summing up speech setting out her evidence arguments in the case at the conclusion of the evidence. She did however state that she wished to be reinstated and awarded compensation.
34. The claimant in this case was saying that the real reason that she was dismissed was not because of her misconduct but as a result of a conspiracy (not a word that the claimant used but the effect of what she was saying has that meaning) between SD and her managers. The claimant was emphatic that she had raised grievances and complaints arising from the behaviour of SD which the respondent had not dealt with over a period of time.
35. The respondent's witness Mr Hazar gave a clear and straight forward account of what he did in investigating the claimant's grievance and the complaints made against her. I am satisfied that he carried out a detailed and thorough investigation into the matters he had to consider. There were 23 interviews conducted and other material seen by him which was used by him to come to his conclusions on the claimant's grievance report and the complaints that were made against the claimant.
36. Mr Tanberk was praised by the claimant as to his personal character and integrity, however the claimant criticised him on the basis that he was left with no choice but to support the respondent and ignore the justice of the claimant's case as a result. I reject that argument. It is my view that Mr Tanberk was, because of the way that the claimant approached the

disciplinary hearing, left with little room to be able to make findings in favour of the claimant. She did not give him the evidential basis to challenge the findings that had been made by Mr Hazar in his thorough and conscientious investigation and report.

37. Mr Baykal gave me the impression that he listened with care to the claimant's appeal but was not convinced that she was entitled to have the decision to dismiss her set aside.
38. I am satisfied that the respondent held the genuine belief that the claimant was guilty of gross misconduct. I am not convinced that the claimant who gave her evidence in this case passionately and in my view honestly has shown that the enmity that SD had towards her was the reason for the claimant's dismissal as opposed to the genuine belief by her managers that the claimant was guilty of misconduct.
39. The respondent set out clearly the allegations that the claimant faced following the conclusions which had been arrived at by Mr Hazar. In arriving at those conclusions Mr Hazar had carried out a conscientious and thorough investigation. There was plenty of evidence if he accepted it, which he did, that pointed Mr Hazar to the claimant being guilty of misconduct in the manner alleged. Mr Hazar had no direct daily working relationship with the claimant and there was no history of enmity between them. While the claimant suggested that there was a desire to tow the respondent's line by Mr Hazar and others she failed to illustrate by evidence the existence of such a line which was not drawn by the evidence as the managers believed it to be. I am satisfied having had the opportunity of reviewing the evidence before the respondent and listening to and considering the claimant's response to that evidence there were reasonable grounds for the respondent to conclude as they did on the claimant's alleged misconduct.
40. The claimant says that the procedure that the respondent followed was unfair. The claimant says that she made numerous complaints about SD that were not investigated by the managers. The respondent's response, given in the evidence of Mr Baykal, is that where the claimant has made complaints they would have been considered by the respondent who was open to considering any allegation made by employees, the claimant was expected to produce some evidence upon which to base any allegation and it was the failure of the claimant to provide any evidence in support of her allegations that led to no action being taken.
41. The procedure that was followed by the respondent in my view was a process that a reasonable employer could consider appropriate. The claimant's grievance was considered at the same time as cross allegations about the claimant were considered. It was only after there had been a determination of the grievance and counter grievances had been made that the claimant was subjected to a disciplinary process. The disciplinary process engaged with the claimant and invited her to provide a response to the allegations against her. The claimant's approach to the disciplinary hearing was self-defeating in that her failure to properly engage with Mr

Tanberk meant that the claimant denied the respondent of the basis on which to reach conclusions in the claimant's favour.

42. The claimant appealed the decision to dismiss her. This was considered by Mr Baykal. Other than the assertion of conspiracy there is no criticism made of the way that the appeal was considered. The claimant has criticised the process in that there was no appeal consideration of the claimant's grievance. The fault here lies in the main with the claimant in that she failed to put forward a basis for the appeal notwithstanding that the claimant was prompted to do so on two occasions. I am satisfied that the procedure followed by the respondent was reasonable.
43. The claimant's dismissal was in my view reasonable having regard to all the circumstances and the substantial merits of the case.
44. The claimant was alleged to have taken a photograph of SD's email and then sent a copy of that email to SD's husband. The claimant agrees that she did all this. The claimant however seeks to justify her actions by asking rhetorically, "*what would you have done if it was you?*" The actions that the claimant admitted to in this regard were such that they amounted to gross misconduct under the respondent's policy and procedure. There was no reasonable justification for the the claimant's actions in copying the email to SD's husband, the claimant's purpose can only reasonably have been considered as to cause mischief. The claimant's explanation sought to put forward a high-minded reason relating to her religion and the duty of fidelity of a wife towards her husband, in my view this does not provide mitigation for the claimant's actions so as to call into question the decision to dismiss the claimant.
45. The respondent also concluded that the claimant had contacted two of her colleagues with a view to influencing them as to what they said in the course of the respondent's investigations, that the claimant had been rude to a member of Turkish Airlines air crew, that the claimant had taken a photograph of a colleague without their consent (and that the claimant had done this on other occasions also) and that the claimant was guilty of various instances of inappropriate behaviour. The claimant admitted some of this conduct. The respondent also concluded that the claimant's conduct was such that it made working relationships "*virtually impossible as your colleagues felt unable to communicate with you as it would lead to arguments in the workplace.*"
46. The respondent was in my view entitled to conclude that in light of the claimant's misconduct that included gross misconduct that the dismissal of the claimant was the appropriate sanction. The claimant was not unfairly dismissed.

Wrongful dismissal

47. The respondents Employment Handbook gives examples of acts that would be considered gross misconduct and includes: "*Unauthorised access to, or*

misuse of, computer systems". The claimant's admitted actions in respect of the email on SD's computer is a clear instance of something that may be considered gross misconduct. In the dismissal letter the claimant. In the decision letter the claimant was informed by Mr Tanberk, after he had set out the findings he had made about the claimant's conduct, that: *"In the light of the above, I have concluded that the allegations are substantiated and that you have committed acts of gross misconduct."*

48. I am satisfied that the claimant had admitted the email incident and taking photographs of a colleague. The claimant accepted that an incident occurred with Turkish Airlines air crew member, I am satisfied that on balance of probability that the claimant, behaviour could be considered rude. The claimant denies that she was otherwise behaving inappropriately towards colleagues. On the basis of the information that is before me I am satisfied that the claimant was guilty of gross misconduct by reason of the matters that she admitted in respect of the SD email and additionally with the cumulative effect of the other two incidents that I find on balance of probability. Where there is a gross misconduct the respondent is entitled to terminate the claimant's employment without notice.
49. The claimant's case of wrongful dismissal is not well founded and is dismissed.

Employment Judge Gumbiti-Zimuto

Date: 8 June 2023

Sent to the parties on: 18 June 2023

GDJ
For the Tribunals Office

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